



[4910-EX-P]

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2014-0071]

Hours of Service of Drivers: McKee Foods Transportation, LLC, Application for Exemption

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition; grant of application for exemption.

SUMMARY: FMCSA announces its decision to renew McKee Foods Transportation, LLC's (MFT) exemption from the hours-of-service (HOS) regulation pertaining to the use of a sleeper berth. Current HOS rules require that all sleeper-berth rest regimens include, in part, the regular use of a sleeper-berth period for at least 8 hours – combined with a separate period of at least 2 hours, either in the sleeper berth, off duty, or some combination of both – to gain the equivalent of at least 10 consecutive hours off duty. The exemption enables MFT team drivers to take the equivalent of 10 consecutive hours off duty by splitting sleeper-berth time into two periods totaling 10 hours, provided neither of the two periods is less than 3 hours. FMCSA has analyzed the exemption application and the public comments and has determined that the exemption, subject to the terms and conditions imposed, will achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.

DATES: The exemption is effective [INSERT DATE OF PUBLICATION OF THIS NOTICE IN THE FEDERAL REGISTER and expires INSERT DATE 5 YEARS FROM PUBLICATION OF THIS NOTICE IN THE FEDERAL REGISTER.]

FOR FURTHER INFORMATION CONTACT: Mr. Richard Clemente, FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards; Telephone: (202) 366-4225. E-mail: MCPSD@dot.gov. If you have questions on viewing or submitting material to the docket, contact Docket Services, telephone (202) 366-9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to www.regulations.gov and insert the docket number, FMCSA-2014-0071, in the “Keyword” box, and click “Search.” Next, click the “Open Docket Folder” button and choose the document to review. If you do not have access to the Internet, you may view the docket online by visiting the Docket Management Facility in Room W12-140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue, SE, Washington, DC 20590, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays.

II. Legal Basis

FMCSA has authority under 49 U.S.C. 31136(e) and 31315(b) to grant exemptions from certain parts of the Federal Motor Carrier Safety Regulations (FMCSRs). FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that

have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews safety analyses and public comments submitted, and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The Agency's decision must be published in the **Federal Register** (49 CFR 381.315(b)) with the reasons for denying or granting the application and, if granted, the name of the person or class of persons receiving the exemption, and the regulatory provision from which the exemption is granted. The notice must also specify the effective period (up to 5 years) and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

III. MFT's Request for a Renewal

MFT requested a renewal of its exemption from the sleeper berth provision in 49 CFR 395.1(g)(1)(ii)(A)(1-2). The exemption renewal would allow MFT team drivers to continue to take the equivalent of 10 consecutive hours off duty by splitting sleeper berth time into two periods totaling 10 hours, provided neither of the two periods is less than 3 hours. The application for a renewal is available for review in the docket referenced at the beginning of this notice.

FMCSA granted MFT a one-year exemption on March 27, 2015 [80 FR 16503]. On April 20, 2016 [81 FR 23349] the Agency extended its expiration date to March 27, 2020, in response to Section 5206(b)(2)(A) of the "Fixing America's Surface Transportation Act" (FAST Act). The statute extended the expiration date of hours-of-

service (HOS) exemptions in effect on the date of enactment of the FAST Act to 5 years from the date of issuance of the exemptions.

IV. Method to Ensure an Equivalent or Greater Level of Safety

MFT states that it is committed to maintaining its outstanding safety record by focusing on continuous improvement, promoting technologies to enhance safety, conducting thorough inspections and having well-communicated policies in place to address both safety and compliance-related topics. To ensure an equivalent level of safety, MFT offers the following safeguards: 1) Every week, all transportation operations shut down one hour prior to sundown on Friday until one hour after sundown on Saturday, resulting in an automatic minimum 26-hour off-duty home time for all drivers each weekend. This is in addition to home time during the week; 2) All tractors are equipped with speed limiters; 3) Drivers will continue using electronic logging devices (ELDs) to track their duty time and HOS compliance; 4) Drive time is reduced from 11 hours to 10 hours. Team drivers are limited to 10 hours of driving prior to completing their required 10 hours total in the sleeper berth; and 5) Behavior-based event data is monitored from the ELD to enhance safety measures to help reduce the probability of accidents on the road.

MFT believes that by allowing its drivers to exercise flexibility in their sleeper-berth requirements, the drivers experience more quality rest. MFT notes that during the last five years it has witnessed an improved physical state upon completion of drivers' trips. The short sleep-berth periods have allowed for more flexible work patterns, allowing them the opportunity for rest periods when they need it.

V. Public Comments

On January 30, 2020, FMCSA published notice of MFT's application and requested public comment [85 FR 5532]. The Agency received eight comments. The Truckload Carriers Association (TCA), and six other individual commenters filed in support of MFT's request for renewal. TCA supported the exemption request, writing "time and again, our drivers have iterated the importance of stopping the 14-hour clock so that they can take a break or nap when they are tired. Giving fatigued drivers the confidence to stop driving, by providing them the option to stop their on-duty clock, will lead to safer and more alert operations of commercial trucks.... McKee Foods has been operating safely under its exemption for the past 5 years, showing that this split-sleep configuration has allowed for drivers to obtain adequate rest and has provided for a safer environment on the roadways." Other commenters supported granting the same sleeper-berth provisions to all other trucking companies' team drivers. Another supporting commenter added that MFT was recognized as a safe operation for repeat safety awards they had received from their State trucking association the past two years. A one opposing commenter said that MFT should operate under the same HOS rules as everyone else – referencing the upcoming HOS final rule which includes revised sleeper-berth provisions allowed for HOS compliance.

VI. FMCSA Response and Decision

The FMCSA has determined that granting MFT's its exemption renewal will likely achieve a level of safety that is equivalent to, or greater than, the level of safety achieved without the exemption [49 CRR 381.305(a)]. The FMCSA reviewed the MFT's application, comments to the docket, and MFT's safety record from March 2015-March 2020. The safety record reflects 47 reportable accidents; of which only 15

reported injuries with no fatalities. The original exemption granted to MFT has not had an adverse effect on the applicant's Hours of Service or Crash Safety Measurement System (SMS) scores. The applicants SMS scores reflect 0.07 for the HOS violation rate and 0.08 for Crash.

VII. Terms and Conditions for the Exemption

Extent of the Exemption

The team drivers employed by MFT are provided a limited exemption from the sleeper-berth requirements of 49 CFR 395.1(g)(1)(ii)(A)(1-2) to allow these drivers to split sleeper-berth time into two periods totaling at least 10 hours, provided neither of the two periods is less than 3 hours in length. While operating under the granted exemption, MFT team drivers are subject to the following terms and conditions:

- Every week, all transportation operations will shut down one hour prior to sundown on Friday until one hour after sundown on Saturday;
- All tractors are equipped with speed limiters;
- Drivers will use ELDs to track their duty time and HOS compliance;
- Drivers are limited to 10 hours of driving;
- MFT will monitor behavior-based event data via ELD; and
- MFT drivers must have a copy of this notice in their possession while operating under the terms of the exemption. This notice serves as the exemption document and must be presented to law enforcement officials upon request.

The carriers and drivers must comply with all other requirements of the Federal Motor Carrier Safety Regulations (49 CFR parts 350-399).

Preemption

In accordance with 49 U.S.C. 31315(d), during the period this exemption is in effect, no State shall enforce any law or regulation that conflicts with or is inconsistent with this exemption with respect to a firm or person operating under the exemption.

Notification to FMCSA

MFT must notify FMCSA within 5 business days of any accidents (as defined by 49 CFR 390.5), involving the operation of any of its CMVs while utilizing this exemption. The notification must include the following information:

- (a) Date of the accident;
- (b) City or town, and State, in which the accident occurred, or closest to the accident scene;
- (c) Driver's name and license number;
- (d) Vehicle number and State license number;
- (e) Number of individuals suffering physical injury;
- (f) Number of fatalities;
- (g) The police-reported cause of the accident;
- (h) Whether the driver was cited for violation of any traffic laws, or motor carrier safety regulations; and
- (k) The driver's total driving time and total on-duty time of the CMV driver at the time of the accident.

Reports filed under this provision shall be emailed to MCPSPD@DOT.GOV.

VIII. Termination

The FMCSA does not believe the team drivers covered by the exemption will experience any deterioration of their safety record. However, should this occur, FMCSA

will take all steps necessary to protect the public interest, including revocation of the exemption. The FMCSA will immediately revoke the exemption for failure to comply with its terms and conditions.

James A. Mullen,
Acting Administrator.

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